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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/679,698	10/05/2000	Donny Ray Jenkins	00-2024	8914

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EXAMINER

ATKINSON, CHRISTOPHER MARK

ART UNIT PAPER NUMBER

3743

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO. <u>50</u>
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 7

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 7/1/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above, claim(s) 2-3, 5, 7-8 and 11 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 4, 6, 9-10 and 12-20 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☒ The drawing(s) filed on 10/5/2000 is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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***Response to Election***

Applicant's election of species A as illustrated in Figures 1-2 and subspecies iii as illustrated in Figure 7 in Paper No.'s 4 and 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 2-3, 5, 7-8 and 11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and subspecies, there being no allowable generic or linking claim. Election was made without traverse in Paper No.'s 4 and 6. Claim 8 reads on non-elected species B or C as illustrated in figures 4 or 5.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the means for changing a temperature and a cavity must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

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A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1 and 9 are rejected under 35 U.S.C. § 103 as being unpatentable over Elkins et al. in view of Miller.

The patent of Elkins et al. discloses all the claimed features with the exception of the vest having a continuous serpentine channel having at least one short passage. As stated in *Ex parte Masham*, "a recitation with respect to the material intended to be worked upon by a claimed apparatus does not impose any structural limitations upon the claimed apparatus which differentiates it from a prior art apparatus satisfying the structural limitations of that claimed." However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the fluid being antifreeze, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

The patent of Miller in figures 1-2, 9 and 14 discloses that it is known to have at least one short passage connected to a continuous serpentine channel for the purpose of having uniform

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heat transfer and fluid flow. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Elkins et al. at least one short passage connected to a continuous serpentine channel for the purpose of having uniform heat transfer and fluid flow as disclosed in Miller.

Claims 4, 6, 10 and 12-20 are rejected under 35 U.S.C. § 103 as being unpatentable over Elkins et al. in view of Miller as applied to claims 1 and 9 above, and further in view of Bumbarger.

The patent of Elkins et al. as modified, discloses all the claimed features with the exception of the specifically claimed vest layers.

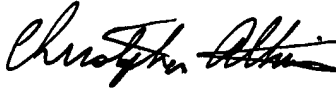
The patent of Bumbarger for the purpose of preventing the garment from rupturing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Elkins et al. as modified, the specifically claimed vest layers for the purpose of preventing the garment from rupturing as disclosed in Bumbarger. As stated in *Ex parte Masham*, "a recitation with respect to the material intended to be worked upon by a claimed apparatus does not impose any structural limitations upon the claimed apparatus which differentiates it from a prior art apparatus satisfying the structural limitations of that claimed." However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the claimed materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Atkinson whose telephone number is (703) 308-2603.



CHRISTOPHER ATKINSON  
PRIMARY EXAMINER

C.A.

September 20, 2002